(1)

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

Supreme Court, U.S.
FILED
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OFFICE OE THE CLERK

Lindsey K. Springer,

Petitioner,

v.

THE INFINITY GROUP CO.,;
ROBERT F. SANVILLE, individually
and as Trustee for Infinity Group Co.,

Respondents.

Writ of Certiorari

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Lindsey K. Springer
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Tulsa, Oklahoma, 74135
918-748-5539

2500

QUESTION(S) PRESENTED

1. Whether Judicial Branch of Government should be separate, destinct and independent from Executive and Legislative Branchs of the United States Government?

2. Whether Judicial Immunity has any Constitutional limitation?

3. Whether Court accepting S.E.C. nomination of Trustee to take control of defendant and relief defendants assets and to do accounting is act done in Courts Judicial capacity?

4. Whether a court appointed trustee, nominated by the S.E.C. in a civil enforcement action and to whom objection was raised and remains by petitioner, is entitled to judicial immunity, or any form thereof, as only a Judge should enjoy?

5. Whether publication circulated by Court-Appointed Trustee to over 10,000 investors, which purported to quote Court Order by placing quotations around statement circulated, when statement was not qucte, and to which Trustee had access to actual language relied upon by Court in Court order, and to which altered general principal of Court Order, can be held as libelous per-se for the purpose of a Motion to Dismiss?

6. Whether Court appointed Trustee, appointed as Trustee of Private held Trust agreement, nominated by S.E.C. and accepted by United States District Court Judge, can be held libel for libelous and slanderous statements published and circulated to over 10,000 alleged investment contract holders, while acting under color of an official nature?

7. Whether Court appointed Trustee, when in performance of his duty and while conducting asset distribution accounting for Trust, is legally protected by either Judicial Immunity or Quasi Judicial Immunity for published statements that are alleged to be libelous and slanderous against Petitioner, and to which are not quotes as presented to publications 10,000 plus recipients?

8. Whether communications in writing to the public which purport to be quoting findings of Judicial decrees, by purported officers of the Court, are merely held to an "accurate reflection" standard or "general principal standard" and not the "verbatim standard" usually associated with purported quotes or purported quotations involving the delicate issues surrounding libel and slanderous action in Oklahoma?

9. Whether finding of fact that alleged libelous and slanderous publication contains edited statement, by both district court and circuit courts, warrants denial of pre-answer Motion to Dismiss where movant claimed petitioner failed to state a claim to which relief can be granted involving purported quotes which were found not to be quotes?

LIST OF PARTIES

[X]All parties appear in the caption of the case on the cover page.

[ ]All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Petitioner respectfully prays that a Writ of Certiorari issue in review of the judgement below.

OPINIONS BELOW

[x] For case from **federal court:**

The orders of the United States District Court appear at Appendix **A** to the petition.

The orders of the United States Court of Appeals for the Tenth Circuit appear at Appendix **A** to the petition.

JURISDICTION

[x] For cases federal court:

The date on which the United States District Court issued it order; August 25, 1998.

The date on which the United States Court of Appeals for the Tenth Circuit Affirmed District Court's Order; August 26, 1999.

Petition for Rehearing En Banc was not filed.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a).

THIS PETITION IS IN AID OF APPELLATE JURISDICTION

I. STATEMENT OF THE CASE

Begining April 2, 1997, the Security and Exchange Commission ("SEC") began a formal investigation of a private membership (169.00 to join) association referred to as The Infinity Group Company Trust ("TIGC") involving 10,000 people from every State in the Union and some territories of the U.S.

On August 26, 1997, the SEC commenced formal injunctive action in the Eastern District of Pennsylvania claiming against TIGC for violations of the Security Laws of both 1933 and 1934 ("the Acts") and also claimed against Lindsey K. Springer, d/b/a Bondage Breakers Ministries ("petitioner") (**as a mere "relief defendant" therein**) solely on basis petitioner was in possession of ministry donations (1.265 million) to which allegedly originated from the alleged conduct against TIGC and that since petitioner had allegedly not given any consideration for this donation, although no wrong doing was

alleged against petitioner, SEC claimed they could demand discorgment of the allegedly unconsidered donation from petitioner.

On August 27, 1997, the SEC, among others, requested the district court appoint a Trustee to act on its behalf to account to the SEC what the current position of all property belonging to TIGC was and to take control and possession of all property beloning to those accused of Security Law violations. These violations consisted of failure to register a security with the SEC as well as alleged activation of the anti-fraud provisions governing the sale of a registered or unregistered security in the form of an investment contract. (3rd Cir. heard Oral Argument 3-2-99, no decision yet)

On September 3,4, 1997, a preliminary hearing was held in Philadelphia wherein the United States District Court ("Philadelphia Court") continued a asset freeze of all parties named in the SEC's complaint as well

as the Court accepted the SEC's nomination of Robert F. Sanville of Sanville and Company ("Sanville") as a "Trustee" assigned to certain specific duties over petitioner's pronounced objections.

Between September 4, 1997, and the final hearing of and including February 6, 1998, Sanville and petitioner had very little communication or involvement, save the disposition of petitioner's donation then currently held.

In its Order of February 6, 1998, the Philadelphia Court continued Robert F. Sanville, C.P.A. as trustee over all funds, assets, chooses in action, property belonging to, in the possession of, beneficially owned by, or in the control of TIGC and received an additional directive by the Philidelphia Court.

Furthermore, the Philadelphia Court ordered Robert F. Sanville ("Respondent") to "as soon as practicable," "to notify all

existing investors of the terms of this [the Philadelphia Court] order, initiate proof of claim procedures in order to determine the Trust's final obligation to its investors.;.."

On March 6, 1998, a letter headed by the name "The Infinity Group Company Trust, purported to be authored by Robert F. Sanville, Trustee, P.O. Box 717, Abington, PA 19001-0717 addressed to "Persons who may have invested in The Infinity Group Company ("TIGC"):" that he had a "duty" to inform the "maybe" investors that the Philadelphia Court found they [you] "were victim of a fraud."

This letter published to its reader that on February 6, 1998, after a four-day final injunction hearing held in Philadelphia, the Philadelphia United State District Judge Dalzell found TIGC, Geoffrey P. Benson ("Benson") and Geoffrey J. O'Connor ("O'Conner") **guilty** of violating various provisions of the Security Act of 1933 and

the Exchange Act of 1934. Certainly guilty was not a finding of the district court since the action involved was injunctive.

This letter further demonstrated sound bite quotes from a plethora of orders and memorandums issued by the district court which were not ever served upon any of the "persons who may have invested with TIGC." Over 10,000 people it was alleged. This letter was not served on petitioner. Petitioner was confronted with said letter while a U.S. Attorney attempted impeachment of petitioners testimony in a unrelated case.

After several communicative attempts by petitioner to respondents, petitioner initiated a libel and slander action in the Northern District of Oklahoma citing diversity of citizenship as cause to invoke Jurisdiction pursuant to 28 U.S.C. § 1332.

On April 21, 1998, petitioner filed his complaint pursuant to 12 O.S. §§ 1441 & 1442 and demanded for a Jury Trial.

Service was perfected upon all three named defendants by private process and on May 26, 1998, one of the defendants, Robert F. Sanville, Court appointed Trustee, the Infinity Group Company, filed Motion to Dismiss petitioner's complaint against "him" pursuant to FRCP 12(b)(1) & (6).

On June 10, 1998, petitioner filed his response to the "Trustee" Motion to Dismiss along with Motions for Default Judgment and Request for Clerk to enter the Default against Robert F. Sanville, individually and The Infinity Group Company.

On June 22, 1998, TIGC and Robert F. Sanville requested the Northern District of Oklahoma allow their attorney to appear pro hac vice without fees being tendered.

On June 22, 1998, Robert F. Sanville entered a Response to petitioner's request for Default and Default Judgment against him.

On June 29, 1998, Chief Judge Kern ordered Magistrate Eagan to Report and

Recommend involving docket number "2-1" of Robert F. Sanville, Court appointed Trustee, the Infinity Group Company.

On July 24, 1998, Magistrate Eagan filed her Report and Recommendation as orderd by Chief Judge Kern. [See **Appendix A, pg. 1**]

On August 3, 1998, petitioner timely filed his objections to the Magistrates Report and Recommendations.

On August 25, 1998, Chief Judge Kern filed a final order granting the Motion to Dismiss [dkt # 2-1], disposing of all claims pending before the Northern District of Oklahoma. [**See Appendix A, pg. 21**]

On September 23, 1998, petitioner filed his Notice of Appeal and the 10th Circuit Court had jurisdiction over petitioner's Appeal and rendered a decision on August 26, 1999. [**See Appendix A, pg. 26**]

The Supreme Court of the United States of America, sitting by Constitution, has jurisdiction pursuant to 28 U.S.C. § 1651(a).

2. REASONS FOR GRANTING WRIT.

The Supreme Court has extended immunity to Federal Judges "not because of their particular location within the government but because of the special nature of their responsibilities." Butz v. Economou, 98 S.Ct. 2894 (1978).

The Supreme Court has made the "functional comparability of their judgment to those judges that has resulted in both grand jurors and prosecutors being referred to as 'quasi-judicial' officers, and their immunities being termed quasi judicial as well." Imbler v. Pachtman, 424 U.S. @ 423, 96 S.Ct @ 991.

A court appointed trustee, acting in a civil injunction action and nominated by the S.E.C. to do an accounting of assets associated with allegations against defendants, not relief defendants, and to whom is paid by the very assets to which the

S.E.C. alleged were obtain in violation of the Security Laws, should be held to answer why he published the statements against petitioner and why he did not quote the Court's order since he clearly had access to said order.

"It may be that in a popular sense, all who attend the administration of justice are judicial officers, but, in the legal sense, only those who exercise the judicial function are so considered, and the provisions of both State and Federal Constitutions, reasonably interpreted, must be considered as referring to the latter only." Adams v. State, 17 N.E. Reporter, 2d. Series 85 (1938).

Respondents were not doing any Judicial Function when they sent a letter to over 10,000 people libeling and slandering petitioner. However, the Tenth Circuit Court of Appeals decided that "the common law provides absolute immunity from subsequent damages liability for all persons-

governmental or otherwise-who were integral parts of the judicial process." Valdez v. City of Denver, 878 F.2d 1285 (1989)

Petitioner construes that respondent allegedly fits into the "otherwise" portion of this decision.

Petitioner neither was accused of any violations of Security Laws nor found to have violated any Security Laws by the SEC's complaint filed with the Philadelphia Court. The Philadelphia Court's Order and general principal was not nor did not find that petitioner had defrauded anyone out of anything.

One, some or all respondents were authorized to report the terms and conditions of the February 6, 1998, order for final injunction, discorgement, and other relief only. No authorization allowed any respondent to (1) communicate terms and conditions which either were not contained within the Court's February 6, 1998, order,

or, (2) communicate statements which were not verbatim quotes and to which were represented as verbatim quotes in order to give the statements a alleged true character.

Of the over 10,000 people noticed of the March 6, 1998, letter "to persons whom may have invested with TIGC," none of the recipients received actual notice or copy of any of the plethora of orders and memorandums issued by the Philadelphia Court.

None of the over 10,000 investors received a copy of the S.E.C.'s complaint. With Hundreds of Orders from August 26, 1997, through the date of the March 6, 1998, letter with attached Proof of Claim forms, not one single "investor" had received any consideration by the Philadelphia Court accept for the communication of respondent Sanville on March 6, 1998.

In the August 24, 1998, final order in this action, the District Court found that "in an accompanying memorandum, the

[Philadelphia] court ordered Mr. Springer (petitioner) to disgorge $1.265 million which the court had determined was at issue without proper consideration.

No memorandum accompanied the February 6, 1998, final order, contrary to the District Court discretionary determination. Even if such memorandum did accompany the February 6, 1998, final order [which it did not], no evidence was placed in this record which indicates that such accompaniment was to those whom received the March 6 letter.

The Tenth Circuit Court of Appeals has determined that petitioner's arguments on appeal are "unpersuasive."

Yes, district court found respondents did edit and publish a statement which was not true or a actual quote as purported. **App.A,pg.10** Yes, the Tenth Circuit agrees with the district court on this issue. Yes, the respondent is not a Judicial Officer, or for that matter, a licensed attorney. Yes,

respondent's letter caused damage to petitioner. However, that does not matter. What both the district court and Tenth Circuit seem to be saying is that what matters is that purported quotes do not have to be quotes, orders do not have to be orders, and judicial immunity does not have to be for the judicial branch of government.

Petitioner may have been ordered to disgorge proceeds received from a source which the district court determined violative of the Security Laws. However, this does not mean that petitioner violated the security laws. The district court never determined that petitioner had violated any laws or committed fraud against anyone.

Yet, the letter of March 6, 1998, by respondents, could and did leave the letters recipient with the conclusion that the district court determined that each investors was defrauded for petitioners personal gain. Petitioner was not known by The Infinity

Group Company ("TIGC") until January of 1997. Petitioner was never found to be a principal or even an investor of TIGC.

Attorneys received many thousands of dollars from the proceeds TIGC received from investors, and yet these attorneys are not found to have defrauded investors for their own personal gain by respondent Sanville.

Respondent even receives monthly allotments from the very funds he is charged with protecting and yet he does not believe that the investors were defrauded for his own personal gain.

If a Trustee "who is sued for civil rights violations is a court officer who shares the judge's immunity to the extent he carried out the orders of his appointing judge," (see T & W Inv. Co. v. Kurtz, 588 F.2d 801, 802-03)(10th Cir. 1978), then it is a question of fact as to whether said Trustee carried out the orders of the Judge.

The District Court in Philadelphia did

not order Respondent to mail a letter to 10,000 people purporting to quote the District Court, but actually not quoting, but editing the District Court's findings, to make Petitioner appear to have been found to have defrauded investors. No record suggest that something similar was directed by the District Court.

Defendants and Relief Defendants are separate parties. Respondent reported to the 10,000 people a known false hood. Respondent knew that with a disgorgement order ordering far in excess of Petitioners ability, Petitioner could not possibly defend the untrue and published libel and slander contained within Respondents letter.

Immunizing Respondent is an effort to run over the Judicial independence the United States Judicial Branch of Government so deserves. The question of Fact for a Jury to decide is whether Respondent did in fact carry out the Judges Order; and 2, if not,

did the publication libel/slander Petitioner. These are not issues for a Judge to decide.

"Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability." Forrester v. White, 484 U.S. 219

Petitioner is unable to seek review of the issues raised by Respondents' letter of libel and slander on the grounds that the purported quotes do not appear anywhere in any order of the Philadelphia Court. If this was an issue of review, Petitioner would have to pile inference upon inference to demonstrate how construction of Court Orders may be stretched for the purpose of reaching the appeal issues herein.

The Supreme Court once stated that "the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e. whether it is a function

normally performed by a judge and the expectations of the parties, i.e. whether they dealt with the judge in his official capacity." Stump v. Sparkman, 98 S.Ct. 1099, 1107(1978).

Since Respondent is protected at present by both the District Court and 10th Circuit Court of Appeals with Judicial Immunity, the question is begged "whether the act of editing a court order and sending edited sound bites surrounded by quotations to over 10,000 non-parties, is a function normally performed by judge in his official capacity?"

Petitioner demands that such act is not in performance of any judges official capacity and thus if the judge acted in this manner, he should be held liable for libel and slander. Since Respondents acted in this manner, they should be held liable for libel and slander as any judge might.

If a Court can act through a administrative appointment for the S.E.C.

then clearly there is no distinction between Judicial and Executive powers. No difference here, soon Judicial, Legislative and Executive power would be under one power and this might well describe the beginning of Tyranny. The United States of America is crying out for Judicial Independence.

CONCLUSION

Petitioner believes that the questions involved in this writ, which hinge upon whether a S.E.C. nominated accountant, appointed by the United State District Court to perform accounting and other asset distribution calculations, as a Trustee for a defendant, is judicially immunized for alleged libelous and slanderous publications occurring while in performance of his official duty and under color of authority of his official duty should be answered.

If a Federal Judge could not send a letter to over 10,000 alleged investors because the investors were not parties to the

action which gave rise to the district court's jurisdiction, thus any letter sent by a Federal Judge to investors would be an act **outside** his Judicial function, then any S.E.C. nominated, court accepted accountant who is made Trustee over defendant's and relief defendants assets, who sends a letter to over 10,000 investors purporting to quote a Court order and who is found to have edited the words of the district court and not to have quoted the Court's order, should be held liable personally and officially for his actions as any Federal Judge would be held.

What legitimate purpose would a Federal Judge have to issue an Order pursuant to its judicial function and then depart from the official language of that order, sending a letter which purports to quote the order to over 10,000 non-parties and to which is found not to be quoting the Court's order by two other Federal Courts? The answer, no

legitimate purpose will be served.

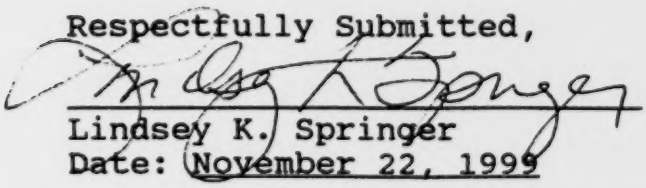
Whether the edited quotes that both the district court and Tenth Circuit Court of Appeals concluded existed, did in fact damage petitioner, is a question for a jury to decide and not the district court judge.

The petitioner request the Supreme Court hear oral argument on this case to settle the issue as to why a appointed Trustee should receive Judicial Immunity for conduct complained against said Trustee while the Trustee was performing other functions not for the Court.

Retaining Judicial Independence is mandatory if the United States of America is to remain established by Constitution with three separate branches of government.

Therefore, the petition for Writ of Certiorari should issue.

Respectfully Submitted,



Lindsey K. Springer
Date: November 22, 1999

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

(2)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Lindsey K. Springer,

Petitioner,

v.

THE INFINITY GROUP CO.,;
ROBERT F. SANVILLE, individually
and as Trustee for Infinity Group Co.,

Respondents.

APPENDIX A

ON WRIT OF CERTIORARI FROM
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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LINDSEY K. SPRINGER, d/b/a Bondage Breakers Ministries, Plaintiff,	)
v.	) Case No. 98-CV-0299-K(E)
THE INFINITY GROUP COMPANY and ROBERT F. SANVILLE, individually and as Trustee of The Infinity Group Company, Defendants.	)

REPORT AND RECOMMENDATION

Plaintiff Lindsey K. Springer initiated this action alleging libel and slander pursuant to Oklahoma Stat. 12, §§ 1441 and 1442(1998). This Court has referred to the undersigned for Report and Recommendation the Motion of Robert F. Sanville, Court-Appointed Trustee, The Infinity Group Company, to Dismiss Plaintiff's Complaint (Docket # 2). Defendant Robert F. Sanville ("Trustee") seeks dismissal under Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction and

Fed.R.Civ.P.12(b)(6) for failure to state a claim upon which relief can be granted. The undersigned recommends that the motion to dismiss be **GRANTED.**

I. STANDARD OF REVIEW

A motion to dismiss is properly granted when it appears beyond doubt that a plaintiff could prove no set of facts entitling him to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L. Ed. 2d 80(1957); Huxall v. First State Bank, 842 F.2d 249, 251(10th Cir. 1988). The complaint is construed in favor of plaintiff and all material allegations made therein are accepted as true. Warth v. Seldin, 422 U.S. 490, 501, 95 S.Ct. 2197, 2206, 45 L.Ed. 2d 343(1975); American Mining Congress v. Thomas, 772 F.2d 640(10th Cir. 1985), cert denied, Kepford v. Thomas 476 U.S. 1158, 106 S.Ct. 2276, 90 L. Ed. 2d 718(1986).

II. FACTS

The undersigned accepts the facts as

plaintiff has presented them. In addition, the undersigned proposes findings that on August 26, 1997, a civil enforcement action was brought in the United States District Court for the Eastern District of Pennsylvania (hereinafter the "Pennsylvania Eastern District") by the Securities and Exchange Commission ("SEC") against The Infinity Group Company("TIGC"), Geoffrey Benson, and Geoffrey O'Connor. The action alleged interstate securities violations. Several relief defendants were named, including Lindsey K. Springer. The Pennsylvania Eastern District, in an order dated September 5, 1997, appointed Robert F. Sanville as Trustee, directing that he was "empowered to assume control over TIGC's assets and to conduct an accounting of its assets and investor proceeds." Memorandum of Law in Support of Motion of Robert F. Sanville, Court-Appointed Trustee, The Infinity Group Company, to Dismiss

Plaintiff's Complaint (Docket # 3), Exhibit A, at 1. On February 6, 1998, the Pennsylvania Eastern District issued an Order for a Final Injunction, Disgorgement, and Other Relief. The court concluded that TIGC, Geoffrey Benson, and Geoffrey O'Connor had violated federal securities laws. Id.,Exh. B.

In an accompanying memorandum, the court ordered Mr. Springer d/b/a Bondage Breakers Ministries to disgorge $ 1.265 million which the Court had determined originated as funds unlawfully obtained from TIGC investors by TIGC and which Mr. Springer had received from TIGC without consideration. Id., Exhibit C, at 16. The Court, in the February 6, 1998 memorandum, stated

> Undoubtedly TIGC's members had faith in TIGC. They certainly had hope that its extravagant guarantees would be fulfilled. But TIGC was no charity--investors were defrauded for defendants' and relief defendants' gain. For that, defendants must answer under securities laws.

Id., Exhibit C, at 3-4(emphasis added).

In the February 6, 1998 order, the court directed Mr. Sanville to continue as Trustee and specifically ordered him to, "As soon as practicable, notify all existing TIGC investors of the terms or this Order [and] initiate proof of claim procedures in order to determine the Trust's final obligations to its investors." Id., Exhibit B, at 5-6. Mr. Sanville sent a letter to some 10,000 persons believed to have been TIGC investors. The letter began; It is my unpleasant duty to inform you that the court has found that you were the victim of a fraud." Id., Exhibit D, at 1. The letter also stated

> The Court made the following findings as part of its decision:
>
> ....
>
> 2. "Investors were defrauded for defendants' (TIGC, Benson and O'Connor) and relief defendants' (Lindsey K. Springer, d/b/a Bondage Breaker Ministries, Susan L. Benson, JGS Trust, SLB Charitable Trust, and Futures Holding Company) personal gain".

Id. Plaintiff claims that these statements constitute libel and slander.

III. REVIEW

A. Jurisdiction

Trustee challenges this Court's jurisdiction over the subject matter of the claim, arguing that "As a court-appointed trustee, Sanville may not be sued in a court other than that which appointed him except under limited circumstances not present here." Id., at 5. The undersigned agrees.

"It is well settled that leave of the appointing forum must be obtained by any party wishing to institute an action in a non-appointing forum against a trustee, for acts done int he trustee's official capacity and within the trustee's authority as an officer of the court." In re DeLorean Motor Company v. Weitzman, 991 F.2d 1236, 1240(6th Cir. 1993); Barton v. Barbour, 104 U.S. 126, 26 L.Ed. 672(1881). The Trustee's dissemination of a letter to investors was an act done in his official capacity and within his authority as an officer of the court.

There is a statutory limited exception to the Barton and DeLorean holdings:

> Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property.

28 U.S.C. § 959. Here, Section 959 does not excuse plaintiff's failure to seek leave of the Pennsylvania Eastern District because the dissemination of a letter to investors was not an act done in carrying on business connected with the property over which Sanville was appointed Trustee. The undersigned recommends that this Court find and conclude that it lacks jurisdiction over plaintiff's claim and, therefore, it must be dismissed in accord with Fed.R.Civ.P. 12(b)(1).

A. Quasi-Judicial Immunity

In the alternative, plaintiff has failed to state a claim upon which relief may be granted. The Trustee asserts that he is

absolutely immune form suite under the doctrine of quasi-judicial immunity. The application of quasi-judicial immunity depends on whether a challenged action was made pursuant to a function integral to the judicial process. "[I]mmunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches." Forrester v. White, 484 U.S. 219, 227, 108 S.Ct. 538, 544, 98 L. Ed. 2d 555(1988). One of many quasi-judicial functions afforded absolute immunity is the power of court-appointed trustees and receivers to perform those actions necessary to their official duties. See Valdez v. City and County of Denver, 878 F.2d 1285, 1287-1288(10th Cir. 1989)(collecting cases which hold that quasi-judicial immunity applies to particular function); T & W Inv. Co. Inc. Kurtz, 588 F.2d 801, 802-803(10th Cir. 1978)(holding that a receiver who is sued for civil rights violations is a court officer

who shares the judge's immunity to the extent he carried out the orders of his appointing judge).

Here, the Trustee was appointed by the Pennsylvania Eastern District and directed by that court to notify investors of the terms of its February 6, 1998 order. In so doing, the Trustee included a quotation from the order that "Investors were defrauded for defendants' and relief defendants' personal gain." Plaintiff complains that the Trustee exceeded his authority when he edited the quote and inserted "(TIGC, Benson and O'Connor)" after "defendants'" and "(Lindsey K. Springer, d/b/a Bondage Breakers Ministries, Susan L. Benson, JGS Trust, SLB Charitable Trust, and Futures Holding Company)" after "relief defendants'." Also, plaintiff complains that his name-given in full-and the name of his ministry were placed first within the parenthetical insert. Contrary to the assertions of plaintiff, what

little editing of the quote that was done by the Trustee was (1) accurate, (2) merely for clarification, and (3) did not in any way alter the meaning of the February 6, 1998 order. Nor can anything be made of placing plaintiff's name first within the parenthetical insert. One of the relief defendants' names had to be listed first and the fact that it happened to be plaintiffs does not amount to an overstepping of authority.

The Trustee's letter was properly within his authority as granted pursuant to the order of the Pennsylvania Eastern District. Therefore, the undersigned recommends a finding that the Trustee is absolutely immune from suit for any libel and slander arising from dissemination of the letter.

Moreover, both Pennsylvania and Oklahoma law exempt from their libel and slander statutes certain privileged communication including communication made in any judicial

proceeding or other proceeding authorized by law, in discharge of an official duty, or by a fair and true report of a judicial proceeding.1 While it is not necessary to reach the issue of privilege, the undersigned notes that it appears that the Trustee's letter sent in the course of the proper discharge of his official duties and the letter contained a fair and true report of a judicial proceeding. Thus, the letter would be a privileged communication and exempt from Oklahoma's and Pennsylvania's libel and slander laws.

The Undersigned recommends, in the alternative, that this Court find and conclude that plaintiff's complaint fails to state a claim upon which relief may be granted and, therefore, must be dismissed in accord with Fed.R.Civ.P. 12(b)(6).

IV. CONCLUSION

Upon careful review of the complaint and the parties' briefs, for the foregoing

reasons, the undersigned recommends that the Motion of Robert F. Sanville, Court-Appointed Trustee, The Infinity Group Company, to Dismiss Plaintiff's Complaint (Docket # 2) be **GRANTED**.

V. OBJECTIONS

The District Judge assigned to this case will conduct a de novo review of the record and determine whether to adopt or revise this Report and Recommendation or whether to recommit the matter to the undersigned. As part of his review of the record, the District Judge will consider the parties' written objections to the Report and Recommendation. A party wishing to file objections must do so within ten days after being served with a copy of the Report and Recommendation. See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). Failure to file written objections may bar the party failing to object from appealing any of the factual or legal findings in this Report and

Recommendation that are accepted or adopted by the District Court. See Ayala v. United States, 980 F.2d 1342(10th Cir. 1992); Niehaus v. Kansas Bar Ass'n, 793 F.2d 1159, 1164-65(10th Cir. 1986)(Superseded by rule on grounds not relevant to holding on waiver of right to appeal).

Dated this 24th day of July, 1998.

Claire V. Eagan
United States Magistrate Judge

1. Although plaintiff sued under Oklahoma law, this Court would have to apply choice of law considerations to a determination of whether Oklahoma or Pennsylvania law applies. However the undersigned recommends that the Court not reach that issue, as the law of both states recognizes that privileged communication exception. See Okla. Stat. tit 12 § 1443; Joplin v. Southwestern Bell Telephone co., 753 F. 2d 808, 810,(10th Cir. 1983); Kirschstein v. Haynes, 788 P. 2d 941(Okla. 1990); Lindner v. Mollan, 544 Pa 487, 490, 677 A 2d. 1194, 1195 (Pa. 1996); Kemper v. Fort, 219 Pa. 85, 67 A. 991(Pa 1907).

The Infinity Group Company Trust
Robert F. Sanville, Trustee
P.O. Box 717
Abington, PA 19001-0717
215-885-7930

March 6, 1998.

To persons who may have invested in
The Infinity Group Company ("TIGC")

It is my unpleasant duty to inform you that the court has found that you were the victim of a fraud. On February 6, 1998, after a four-day final injunction hearing held in Philadelphia, PA, the Honorable Stewart Dalzell, United States district Judge for the Eastern District of Pennsylvania, found TIGC, Geoffrey P. Benson("Benson") and Geoffrey J. O'Connor ("O'Connor") guilty of violating various provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.

The Court made the following findings as part of its decision:

1. "The Bensons used TIGC as their personal checking account".

2. "Investors were defrauded for defendants' (TIGC, Benson and O'Connor)

and relief defendants'(Lindsey K. Springer, d/b/a Bondage Breakers Ministries, Susan L. Benson, JGS Trust, SLB Charitable Trust, and Futures Holding Company) personal gain".

3. "Virtually every material statement TIGC made was false".

4. "Of the more that $ 24 million raised from investors, only approximately 48% went into anything that could be characterized as an investment. From the $ 11.8 million that went into purported investments the evidence is uncontroverted that TIGC earned not one cent of interest, dividend, or return of any kind".

5. "Early investors who requested refunds were not paid from investment process, but rather from money received from later investors. In the time-dishonored tradition of Charles Ponzi, TIGC substituted new investors' money for real investment return on old investors funds".

6. "At best, defendants' investment enterprise began as a reckless financial enterprise, and evolved into an intentional scheme to defraud investors of their money when the money became necessary to prevent TIGC's collapse. At worst, TIGC's Asset Enhancement Program was from its inception, a Ponzi Scheme, calculated to bilk investors".

The Court issued the following as part of its decision:

1. Permanently enjoined TIGC, Benson

and O'Connor from violating certain provisions of the federal securities laws. this means that TIGC is permanently closed down.

2. Continued my appointment as"trustee for all funds, assets, choses in action, or other property belonging to, in the possession of, beneficially owned by or in the control of TIGC".

3. Required TIGC, Benson and O'Connor, Futures Holding Company, SLB Charitable Trust, Susan L. Benson, JGS Trust, Lindsey K. Springer and Bondage Breakers Ministries to disgorge(or turn over) to me "funds or assets now held by them, under their control or over which they exercise actual or apparent control, in whatever form such funds or other assets may now exist". The amounts of the disgorgements are $ 24, 597.386.29 jointly and severally from TIGC, Benson and O'Connor; $ 2,488, 515.94 from SLB Charitable Trust and Susan L. Benson; $ 1,425,900.00 from Future

Holding Company and Susan L. Benson; 125,000.00 from JGS Trust and Susan L. Benson; and $ 1,265,000.00 from Lindsey K. Springer and Bondage Breakers Ministries.

WHAT AM I DOING NOW?

As Trustee, I have been evaluating what claims TIGC has against others. In addition to pursuing the disgorgment order discussed above, I will pursue those claims that I believe will be in the best interest of TIGC investors. These include; actions against individuals and entities who sold TIGC worthless and fraudulent investments (such as purported "International Trading programs" and "Private Placements"); Individuals and entities who, in one form or another, assisted in the perpetuation of this fraudulent scheme; and individuals and entities who benefitted from the receipt of funds which were fraudulently obtained.

The assets which are held and which will be recovered by the Trust, lest the expenses

of the Trust, will be distributed to all TIGC investors who submit valid proof of claims. The money will be distributed on a pro-rate basis, or in proportion to the amount invested in TIGC, less any amount received form TIGC. Depending on the success of our recover efforts, there may be more than one distribution. If I were to make a distribution at this time it would be approximately 25 cents on the dollar. (Someone who invested $ 1,200 would received approximately $ 300.)

WHAT MUST YOU DO NOW?

The records kept by TIGC concerning investors' funds were poor. The records simply do not provide the reliable information necessary to identify the investors entitled to refunds. For this reason, I am asking you to complete the enclosed "Proof of Claim form. The form must be completed in its entirety and returned to me, with appropriate proof of your

investment, by April 30, 1998. A return is enclosed. Incomplete or unsubstantiated claims cannot be processed. ONLY THOSE INVESTORS WHO MAIL A COMPLETE VALID PROOF OF CLAIM BY APRIL 30, 1998 WILL BE ENTITLED TO A DISTRIBUTION FROM THE TRUST.

A PERSONAL NOT FROM THE TRUSTEE

The brochures, newsletters, member manuals and faxes of TIGC were replete with reassuring slogans such as "100% guaranteed", "our investments are real", "the truth will set you free", ect. Additionally, revered and patriotic symbols such as the Statute of Liberty, Scales of Justice and American Flag were inserted throughout the literature. Unfortunately, as the Court found based on evidence uncontradicted by Geoffrey and Susan Benson, Geoffrey O'Connon and Lindsey Springer, these were part of schemes to perpetuate a fraud. The documents obtained from TIGC show a portion of your funds were used to foster a lavish lifestyle of the

defendants and relief defendants. None of TIGC's investments ever produced even one cent of return; in many cases the entities themselves are now shut down or out of business. The chance of recovery of even the principal are slim. If you are angry, it is understandable. My function is to make you as whole as possible. I intend to do every thing I can to recover as much of your money as I can. Your patience and cooperation are greatly appreciated. Thank you.

Very Truly Yours

ROBERT F. SANVILLE, TRUSTEE

Enclosure: Proof of Claim Form

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Lindsey K. Springer,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	No. C-299-K
The Infinity Group Co.	)	
and Robert F. Sanville.	)	
	)	
Defendant.	)	

O R D E R

On July 24, 1998, Magistrate Judge Eagan filed a report and recommendation, recommending that this Court grant the motion of the defendants to dismiss this action. The plaintiff has timely filed an objection. The factual background is set forth in the Report and Recommendation. In summary, the plaintiff brings this action for libel and slander under Oklahoma law against the Infinity Group Company ("TIGC") and Robert F. Sanville ("Sanville"), who was appointed TIGC's trustee by the United States District Court for the Eastern District of Pennsylvania.

In that Court, a civil enforcement action had been brought by the Securities and Exchange Commission ("SEC") against TIGC and others alleging interstate securities violations. Lindsey K. Springer, the present plaintiff, was named as a "relief defendant" in the Pennsylvania action. On February 6, 1998, the Pennsylvania court issued an Order for Final Injunction, Disgorgment and Other Relief, having found violations of federal securities laws by TIGC and defendants Geoffrey Benson and Geoffrey O'Connor.

In an accompanying memorandum, the court ordered Mr. Springer to disgorge $1.265 million which the court had determined originated as funds unlawfully obtained from TIGC investors by TIGC and which Mr. Springer had received from TIGC without consideration. In the February 6, 1998 order, the court directed Mr. Sanville to continue as Trustee and specifically ordered him to "As soon as practicable, notify all existing TIGC

investors of the terms of this Order [and] initiate proof of claim procedures in order to determine the Trust's final obligations to its investors." Mr. Sanville sent a letter to some 10,000 persons believed to have been TIGC investors. The letter stated in pertinent part that investors were defrauded for "defendants' (TIGC, Benson and O'Connor) and relief defendants' (Lindsey K. Springer, d/b/a/Bondage Breakers Ministries, Susan L. Benson, JGS Trust, SLB Charitable Trust, and Futures Holding Company) personal gain." Plaintiff herein claims this statement constitutes libel and slander.

The Magistrate Judge recommended dismissal of this action on two grounds. First, this Court lacks subject matter jurisdiction because the trustee's dissemination of the letter to investors was an act done in his official capacity and within his authority as an officer of the Court; therefore, Mr Saville may only be

sued for those actions in the court which appointed him, unless leave of the appointing forum is granted. The Magistrate Judge noted that the language of the letter accurately reflected the findings of the Pennsylvania court in its Order. The slight editing done by the Trustee, and the placing of Mr. Springer's name first in the list of relief defendants, the Magistrate Judge found insufficient to alter the general principle. This Court agrees.

Second, the Magistrate Judge found that the complaint fails to state a claim for relief because court-appointed trustees are entitled to quasi-judicial immunity. Again, this Court agrees.

It is the Order of the Court that the objection of the plaintiff(#25) to the Report and Recommendation of the Magistrate Judge is hereby overruled. The motion to dismiss of defendant Sanville (#2) is hereby GRANTED. Because this ruling requires the dismissal of

the Infinity Group Company as well, this action is dismissed in its entirety.

It is the further order of the Court that all other pending motions are declared moot, with two exceptions. Each side has moved for sanctions against the other. Defendant seeks sanctions against plaintiff for filing a motion for temporary restraining order and plaintiff seeks sanctions against defendants' local counsel, because he signed a motion actually prepared by defendants' Pennsylvania counsel. The Court finds no conduct meriting Rule 11 sanctions in this case. Accordingly, motions # 17 and # 19 are hereby DENIED.

Ordered this 24 day of August, 1998.

Terry C. Kern, Chief
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LINDSEY K. SPRINGER, d/b/a Bondage Breakers Ministries,	)	No. 98-5182 (D.C. No. 98-CV-299-K
Plaintiff-Appellant,	)	
v.	)	
THE INFINITY GROUP CO.; ROBERT F. SANVILLE, individually and as Trustee for Infinity Group.,	)	
Defendants-Appellees.	)	

ORDER AND JUDGMENT

Before
PORFILIO, BARRET, and HENRY, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed.R.App.P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

In August 1997, the Securities and Exchange Commission brought a civil enforcement action for securities violations

in the United States District Court for the Eastern District of Pennsylvania against The Infinity Group Company (TIGC), Geoffrey Benson and Geoffrey O'Conner, and named several "relief defendants," including Lindsey K. Springer. The court appointed Robert F. Sanville as trustee for TIGC and directed him to assume control over TIGC's assets and conduct an accounting of its assets and investor proceeds. In February 1998, the court issued its Order for Final Injunction, Disgorgement, and Other Relief, concluding that TIGC, Benson and O.Connor had violated federal securities law and ordering relief defendant Springer to disgorge $ 1.265 million. In its accompanying memorandum, which the court stated constituted in part its findings of fact and conclusions of law, the court held that TIGC had "defrauded [investors] for defendants' and relief defendants' gain," R.Vol. IDoc.3, Ex C at 3-4, and that Springer's $ 1.265 million was

"TIGC' unlawfully-obtained investor funds, for which [Springer] received no consideration at all and to which he has no legitimate claim," id at 16. In its order the court directed Sanville to notify all existing TIGC investors of the terms of the Court's order and initiate claim procedures.

Sanville sent a letter to potential TIGC investors explaining that "[i]t is my unpleasant duty to inform you that the court has found that you were the victim of a fraud." Id., Ex. D at 1 The letter further stated that "[t]he Court made the following findings as part of its decision...'Investors were defrauded for defendants' (TIGC, Benson and O'Connor) and relief defendants' (Lindsey K. Springer, d/b/a Bondage Breakers Ministries, Susan L. Benson, JGS Trust, SLB Charitable Trust, and Futures Holding Company) personal gain.'" Id.

Claiming these statements were libelous and slanderous, Springer brought this

diversity action in the Northern District of Oklahoma against TIGC and Sanville. Adopting the magistrate Judge's report and recommendation, the district court granted Sanville's motion to dismiss under Fed.R.Civ.Pr. 12(b)(1) and (6). The court held that under the doctrine of Barton v. Barbour, 104 U.S. 126(1881), because Springer was suing Sanville for acts Sanville did in his official capacity as trustee, he needed leave to proceed from the appointing court, i.e., the Eastern District of Pennsylvania, which he did not have. See Allard v. Weitzman (In re DeLorean Motor Co.), 991 F.2d 1236, 1240 (6th Cir. 1993). The court also held that Springer's action did not fall within the exception to the Barton doctrine provided by 28 U.S.C. § 959(a) because Sanville's acts were not performed in carrying out TIGC's business. See In re DeLorean Motor Co.,, 991 F.2d at 1240-41. The Court concluded that it therefore lacked

jurisdiction.

Alternatively, the court held that Sanville was entitled to quasi-judicial immunity because the acts of which Springer complains were taken in his capacity as court-appointed trustee and at the direction of the Eastern District, and that Springer therefore failed to state a claim upon which relief could be granted. **See Valdez v. City & County of Denver**, 878 F.2d 1285, 1287-90(10th Cir. 1989). Springer appeals.

We review the district court's dismissal under Rules 12(b)(1) and (6) de novo. See **Painter v. Shalala**, 97 F.3d 1351, 1355 (10th Cir. 1996); **Chemical Weapons Working Group, Inc. v. United States Dep't of the Army**, 111 F.3d 1485, 1490(10th Cir. 1997). We have reviewed the record and fully considered Springer's arguments on appeal and find his arguments unpersuasive. We affirm the district court's judgement for the reasons stated in its order adopting the magistrate

judge's report and recommendation.

AFFIRMED

Entered for the Court

John C. Porfilio
Circuit Judge.